



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Virtual Public and Tribal Meetings Regarding the Review of Nationwide Permit 12; Establishment of a Public Docket; Request for Input

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; announcement of virtual public and tribal meeting dates and solicitation of input.

SUMMARY: The Department of the Army and the U.S. Army Corps of Engineers (Corps) (together, “Army”), are publishing this notice to announce a formal review of Nationwide Permit (NWP) 12 for Oil or Natural Gas Pipeline Activities. This review includes a series of public and tribal virtual meetings to gather input to inform future potential decision-making related to NWP 12 as well as a public docket to gather written comments.

DATES: Written recommendations must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Army will hold public virtual meetings on the following dates: May 10, 2022, May 12, 2022, May 17, 2022, and May 19, 2022. In addition, the Army will hold tribal virtual meetings on the following dates: May 11, 2022 and May 18, 2022. Please refer to the SUPPLEMENTARY INFORMATION section below for additional information on these virtual meetings.

ADDRESSES: You may send written feedback, identified by Docket ID No. COE-2022-0003, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting written feedback.
- Email: usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil and nationwidepermit12@usace.army.mil. Include Docket ID No. COE-2022-0003 in the subject line of the message.

Instructions: All submissions received must include Docket ID No. COE-2022-0003. Written feedback received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. Out of an abundance of caution for the health of members of the public and staff and to reduce the risk of transmitting COVID-19, the Army cannot currently accept hand delivery of comments. The Army encourages the public to submit written feedback via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes.

FOR FURTHER INFORMATION, CONTACT: Stacey Jensen, in writing at the Office of the Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Washington, DC 20310-0108; by telephone at 703-697-4671; and by e-mail at usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil; or, David Olson, in writing at Regulatory Program, Headquarters, U.S. Army Corps of Engineers at 441 G. Street NW, Washington, DC 20314; by telephone at 202-761-4922; and by e-mail at nationwidepermit12@usace.army.mil.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2021, the Department of the Army, U.S. Army Corps of Engineers (Corps) published a final rule (86 FR 2744) reissuing and modifying 12 existing Nationwide Permits (NWP) and issuing four new NWPs, as well as the NWP general conditions and definitions. In addition, the Corps published another final rule (86 FR 73522) reissuing 40 NWPs and issuing one new NWP on December 27, 2021. Both sets of NWPs are currently set to expire on March 14, 2026.

The NWPs authorize certain activities under Section 404 of the Clean Water Act and

Section 10 of the Rivers and Harbors Act of 1899 with no more than minimal individual and cumulative adverse effects to the environment. Section 404(e) of the Clean Water Act provides the statutory authority for NWP issuance, after notice and opportunity for public hearing, for a period of no more than five years after the date of issuance (33 U.S.C. 1344(e)). Nationwide permits are a type of general permit and are designed to regulate with little, if any, delay or paperwork certain activities in federally jurisdictional waters and wetlands (see 33 CFR 330.1(b)). This program can incentivize project proponents to reduce the adverse effects of their planned activities that would otherwise require an individual permit under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, in order to qualify for NWP authorization. The categories of activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effects on the environment (see 33 U.S.C. 1344(e)(1)). By regulation, NWPs can be modified, reissued, revoked, or suspended before they expire (see 33 CFR 330.5).

NWPs were first issued by the Corps in 1977 (42 FR 37122) to authorize categories of activities that have minimal adverse effects on the aquatic environment, for the purpose of streamlining the authorization process for those minor activities. One such activity authorized in 1977 was for “Utility lines,” which included “any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication” (42 FR 37146). Over the iterations of the NWPs issued since 1977, this NWP has evolved and is commonly referred to as “NWP 12.”

During the previous Administration, a review effort was conducted consistent with Executive Order 13783, *Promoting Energy Independence and Economic Growth*, concluding with a report issued by the Office of the Assistant Secretary of the Army for Civil Works on October 25, 2017. The November 28, 2017 issue of the Federal Register (82 FR 56192)

published a notice of availability for that report. The report included recommendations for modifying NWP 12 (e.g., lowering the number of Pre-Construction Notification (PCN) requirements) which informed the current version of NWP 12.

In the NWPs published in January 2021 (86 FR 2744), NWP 12 was modified and reissued expressly for “Oil or Natural Gas Pipeline Activities.” That final rule limited NWP 12 to only include oil or natural gas pipelines rather than all utility lines, as in previous NWP 12 versions. The January 2021 NWP 12 also removed a number of PCN requirements previously required for the NWP but also included a new PCN requirement for new oil or natural gas pipelines greater than 250 miles in length.

For ease of reference, the full text of the current NWP 12 issued on January 13, 2021 can be found at 86 FR 2860. Note that the general conditions and definitions, such as “single and complete linear project” (86 FR 2877), issued under the same rule action in January 2021 also apply to NWP 12.

II. Review of the Nationwide Permit 12

Pursuant to Corps regulations, the Chief of Engineers is authorized at any time to consider whether modifications or other future actions on an existing NWP 12 may be appropriate. If the Chief of Engineers determines that an action may be appropriate, it implements any such action through the procedures set forth in 33 CFR 330.5.

President Biden signed an Executive Order on January 20, 2021, providing that “[i]t is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.” Protecting Public Health and the

Environment and Restoring Science to Tackle the Climate Crisis, Executive Order 13990, 86 FR 7037 (Jan. 25, 2021). The order further “directs all executive departments and agencies (agencies) to immediately review...the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” *See also* Fact Sheet: List of Agency Actions for Review, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/> (last visited on March 22, 2022), which included the January 2021 “Reissuance and Modification of Nationwide Permits” (86 FR 2744) in the “list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order.”

Therefore, in conformance with Executive Order 13990, and for the reasons below, this Federal Register notice announces a formal review of NWP 12 to determine whether any future actions may be appropriate under 33 CFR 330.5 for NWP 12 prior to its March 14, 2026 expiration. The Army seeks input on the appropriate balance for allowing efficient authorization processes with due consideration for the potential effects of oil and natural gas pipelines as well as the need to engage and inform the public, particularly communities that potentially may be impacted by pipeline construction and operations.

Previous uses of NWP 12 have raised concerns identified in Executive Order 13990, such as environmental justice, climate change impacts, drinking water impacts, and notice to impacted communities. By way of example, in one recent scenario associated with the now defunct Byhalia oil pipeline, the Corps is aware that disadvantaged communities in Memphis, Tennessee expressed environmental justice concerns that the proposed pipeline was to be located in an area which was already the site of many industrial and emission sources, would result in increased air emissions, and would be routed through a drinking water well field providing drinking water to communities and businesses in Memphis from the Memphis Sand Aquifer. The opposition to the Byhalia pipeline identified a concern that the NWP 12 process, as applied to the specific pipeline

in question, did not afford any opportunity for notice to the community, a written comment period or a public hearing prior to the Corps providing authorization for the pipeline. In July 2021, the Plains All American Pipeline Company announced that it would not be proceeding with the Byhalia pipeline project or NWP 12. The Army would be interested in receiving comments on potential revisions to NWP 12, including potential off-ramps, to address the type of concerns raised in the Byhalia pipeline situation.

Before deciding on a path forward regarding any potential future actions which may be taken on NWP 12, the Army wants to gather public and tribal input on NWP 12 to make an informed decision. One important function of this engagement is to receive input from all stakeholders and perspectives. A series of questions are posed below in the Stakeholder Engagement Section to assist in receiving such input. The Army encourages comments on all aspects of NWP 12, to include consideration for going beyond the current construct towards what any new or revised NWP 12 should look like.

The Army acknowledges that there is not a single Federal agency charged with the responsibility for regulating oil pipeline routes or construction as well as the fact that the Corps has limited statutory authorities for construction of such pipelines in jurisdictional waters. However, that does not preclude consideration of alignment of the NWP 12 with Administration priorities and policies established in Executive Order 13990 (86 FR 7037), Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (86 FR 7619), as well as due consideration of environmental justice and climate change factors. In addition, input related to compliance with the statutory authority for the NWP program (Section 404(e) of the Clean Water Act) is also of pertinent interest. The Army further acknowledges that current world events have highlighted the unstable nature of energy production and that domestic oil and natural gas production and distribution will be considered in the review of NWP 12.

III. Stakeholder Engagement

The Army poses a series of questions detailed below for stakeholder input. These questions are only guideposts for comments. Input on all aspects of NWP 12 are welcome. Written input to the docket as well as verbal input during the virtual meetings are strongly encouraged.

- 1) As part of any future action the Army may take with respect to NWP 12, should the Army consider utilization of the procedures in 33 CFR 330.5 in advance of the current cycle for nationwide permit review?
- 2) Should modifications be considered to further ensure NWP 12 has no more than minimal individual and cumulative adverse environmental effects under Section 404(e) of the Clean Water Act?
- 3) Should modifications to NWP 12 be considered to provide notice to and an opportunity to be heard by potentially impacted communities, particularly with regard to environmental justice communities?
- 4) Would it be prudent for the Corps to consider further limits on the NWP 12, PCN requirements, general conditions, and the ability of division and district engineers to modify, suspend, and revoke NWP authorizations to further ensure that the NWP 12 causes no more than minimal cumulative adverse environmental effects at the national, regional, and site scales?
- 5) Should distinctions be drawn between new construction of oil and natural gas pipelines and maintenance of existing oil and natural gas pipelines?
- 6) Should distinctions be drawn between oil pipelines and natural gas pipelines, especially in consideration of differences in overall Federal regulation of different types of pipelines?
- 7) Does the NWP 12 verification process ensure that environmental justice and climate change factors are adequately considered?
- 8) Are the PCN requirements for the current NWP 12 adequate?

- 9) Should there be new triggers for oil or natural gas pipeline activities in jurisdictional waters that mandate review under an individual permit?

IV. Public Meetings and Outreach

The Army will hold a series of public virtual meetings intended to solicit input to inform its review of potential future actions regarding NWP 12. The Army will hold four virtual meetings open to all stakeholders and an additional two virtual meetings specific for tribal input. Registration information for the public and tribal virtual meetings is below. Separate notification to tribal leaders is also being provided.

Registration of members of the public who wish to attend the virtual meeting is required. Spots are limited and those unable to attend are encouraged to provide written comments to the docket which will be given equal consideration. Attendees will be asked to provide their name, title, affiliation, and contact information to include e-mail address and daytime telephone number at registration.

Registration instructions can be found at the following website: <https://www.army.mil/article/254909>. Persons or organizations wishing to provide verbal input during the meetings will be selected on a first-come, first-serve basis. Due to the expected number of participants, individuals will be asked to limit their spoken presentation to three minutes. Once the speaking slots are filled, participants may be placed on a standby list to speak or continue to register to listen to the input. Supporting materials and written feedback from those who do not have an opportunity to speak can be submitted to the docket as described above. The schedule for the NWP 12 virtual meetings is as follows:

Public virtual meetings:

- May 10, 2022, from 1 p.m. to 3 p.m. Eastern,
- May 12, 2022, from 6 p.m. to 8 p.m. Eastern,
- May 17, 2022, from 1 p.m. to 3 p.m. Eastern, and
- May 19, 2022, from 2 p.m. to 4 p.m. Eastern.

Tribal virtual meetings:

- May 11, 2022, from 1 p.m. to 3 p.m. Eastern, and
- May 18, 2022, from 2 p.m. to 4 p.m. Eastern.

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

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